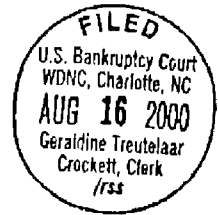


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION



In Re:	)	
	)	Case No. 98-40837
WAYNE JUNIOR RANDOLPH and	)	
LINDA RUPPE RANDOLPH,	)	Chapter 13
	)	
Debtors.	)	
<hr/>		JUDGEMENT ENTERED ON AUG 16 2000

**ORDER GRANTING IN PART AND DENYING IN PART  
DEBTORS' MOTION FOR APPROVAL OF INHERITANCE SETTLEMENT**

This matter came on for hearing before the undersigned on July 28, 2000, upon the debtors' Motion for Approval of Inheritance Settlement and the trustee's objection thereto. Based on that hearing and a review of the record, the Court makes the following:

**FINDINGS OF FACT**

Debtors Wayne and Linda Randolph filed a Chapter 13 bankruptcy petition on December 18, 1998. Their proposed payment plan, which provided for a twenty percent payout to unsecured creditors, was confirmed in an order entered March 10, 1999. Recently, Linda Randolph received an unexpected inheritance from the Estate of Mozelle Gardner McGraw in the sum of \$12,234.74, which she deposited into her bankruptcy attorney's trust account.

The debtors now seek approval to disburse a portion of these funds to their creditors and to retain the balance under the exemption laws of North Carolina. Specifically, the debtors propose (1) to retain \$2,500 of the funds as Linda Randolph's exemption under NCGS § 1C-1601(a)(2); (2) to apply \$2,250 against

a home mortgage loan being paid outside of the plan; (3) to pay the trustee \$7,190.74 towards the balance due on their Chapter 13 plan; and (4) to pay attorney's fees and expenses of \$294.

While the trustee does not oppose the payments suggested by the debtors, he maintains that the base amount, or overall payout, of their plan should increase by the amounts the debtors apply to their plan and mortgage. Upon review of prior decisions in this and other circuits, the Court agrees with the trustee. The debtors' motion is therefore GRANTED IN PART and DENIED IN PART.

#### CONCLUSIONS OF LAW

The debtors argue that the amount to be disbursed to creditors through a Chapter 13 plan is determined solely by the value of the bankruptcy estate at confirmation. Their argument is based on § 1325 of the Code, which states in part that a plan "shall" be confirmed if "the value, *as of the effective date of the plan*, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7." 11 U.S.C. § 1325(a)(4) (emphasis added).

The "effective date" of a Chapter 13 plan for purposes of confirmation is the date the petition was filed. Hollytex Carpet Mills v. Tedford, 691 F.2d 392, 393 (8<sup>th</sup> Cir. 1982). Because Linda Randolph did not receive her inheritance until after the petition date, she maintains that the funds should not be considered part of the bankruptcy estate when calculating her plan payments. Also,

the debtors assert that while an inheritance received within 180 days of the petition date is considered estate property, 11 U.S.C. § 541(a)(5), this bequest was received well after that time period.

However, Code § 1306 expressly modifies the definition of estate property in Chapter 13 cases. That section defines property of the estate to include all property of the kind specified in § 541 (such as an inheritance) which the debtor acquires "after the commencement of the case but before the case is closed, dismissed, or converted" to a case under another chapter. 11 U.S.C. § 1306(a)(1). The debtors' case has not been closed, dismissed, or converted. The bequest is therefore property of the estate under § 1306, and to the extent not covered by an applicable exemption, the funds must be distributed to creditors through the bankruptcy plan.

The Fourth Circuit Court of Appeals encountered a similar scenario in In re Arnold, 869 F.2d 240 (4<sup>th</sup> Cir. 1989). The Arnold court affirmed increases in a debtor's plan payments due to a rise in his income. The court reasoned that while bankruptcy is meant to offer debtors a "fresh start" by providing relief from their debts, bankruptcy inevitably requires courts to balance the competing interests of creditors and debtors alike. Thus, the Fourth Circuit concluded that Congress intended for debtors to repay their creditors to the full extent of their capabilities during the Chapter 13 period: "When a debtor's financial fortunes improve, the creditors should share some of the wealth." Id. at

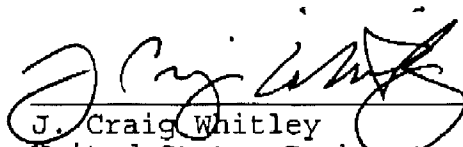
243. See also In re Euerle, 70 B.R. 72 (Bankr. D.N.H. 1987) (payments increased after debtor received interest in estate).

In the present case, a review of the debtors' schedules reveals that Linda Randolph is entitled to claim \$2,500 of the funds as exempt under Code § 522(b)(2) and NCGS § 1C-1601(a)(2). Therefore, after the disbursement of \$7,190.74 to the trustee towards the debtors' Chapter 13 plan, payment of \$2,250 against their home mortgage loan, and \$294 in attorney's fees and expenses, the base amount of the debtors' plan should increase by \$9,734.74.

#### CONCLUSION

WHEREFORE, IT IS ORDERED:

1. The debtors are hereby authorized to disburse the inheritance currently held in their bankruptcy attorney's trust account as follows: \$2,250 against their home mortgage loan; \$7,190.74 towards the balance due on their Chapter 13 plan; and \$294.00 to pay non-base attorney's fees and expenses.
2. Debtor Linda Randolph is granted an exemption of \$2,500 under NCGS § 1C-1601(a)(2), and the debtors are ordered to amend their schedules to reflect this modification;
3. The base amount of the debtors' Chapter 13 shall be increased by \$9,734.74, and the Trustee is directed to modify their monthly payments to allow completion of the plan within 60 months.

  
\_\_\_\_\_  
J. Craig Whitley  
United States Bankruptcy Judge